Issued in Seattle, Washington, on July 26, 1994.

Charles Davis,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–20674 Filed 8–22–94; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Extension of Port Limits of Hilo and Kahului, HI

AGENCY: U. S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations pertaining to the field organization of Customs by extending the geographical limits of the ports of entry of Hilo and Kahului, Hawaii. The proposed change is being made as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources and to provide better service to carriers, importers, and the general public.

DATES: Comments must be received on or before October 24, 1994.

ADDRESSES: Written comments (preferably in triplicate) may be submitted to the Regulations Branch, Office of Regulations and Rulings, U. S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, 1099 14th Street NW., Suite 4000, Washington, D.C., on regular business days between the hours of 9 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Brad Lund, Office of Inspection and Control, 202–927–0192.

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public, Customs proposes to amend § 101.3, Customs Regulations (19 CFR 101.3), by extending the geographical limits of the ports of entry of Hilo and Kahului, Hawaii.

In the list of Customs regions, districts, and ports of entry set forth in § 101.3(b), Customs Regulations, Hilo and Kahului are listed as ports of entry in the Honolulu, Hawaii, Customs District within the Pacific Region.

Current Port Limits of Hilo and Hawaii

The current Customs district 32, Honolulu, includes four ports of entry, including Hilo on the island of Hawaii and Kahului on the island of Maui. The port limits of Hilo and Kahului were defined in a Bureau Letter issued by Customs on December 27, 1948.

The current port limits of Hilo include only a part of the district of South Hilo. The exact port limits of Hilo are as follows:

That part of the district of South Hilo, County of Hawaii, which is bounded on the south by the district of Puna; Bounded on the west by the districts of Kau and North Hilo; on the north by the Ahupuaa of Paukaa in the district of South Hilo; and on the east by the breakwater, and the sea from the west end of the breakwater to the shore line at the south boundary of the Ahupuaa of Paukaa.

The port limits are also said to conform to the city limits of Hilo as found in the Revised Laws of Hawaii (1945), Section 6351.

The current port of Kahului includes the seaport area of Kahului only. The Bureau Letter of December 27, 1948, describes the limits of the Port of Kahului as follows:

Beginning at the eastern end of the west breakwater, proceeding along the north side of said breakwater in a westerly direction to the west side of Kahului Beach Road, thence along the west side of Kahului Beach Road in a generally southeasterly direction to its intersection with Main Street, and thence in a westerly direction along Main Street to its intersection with Pine Avenue, thence southerly along Pine Avenue to its intersection with Sixth Street, thence easterly along Sixth Street to its intersection with Puunene Avenue, thence in a straight line to the southeast (SP) corner of the original Kahului Townsite boundary, thence along said boundary in a northerly direction to the low water line of the shore line, thence along the shore line to the base of the east breakwater, thence along the north side of said breakwater to its end, thence across the entrance of the harbor in a straight line to the point of beginning.

The description given above is out of date in that it includes two streets, Pine Avenue and Sixth Street, which no longer exist.

Proposed Expansion of Ports

On the island of Hawaii, Customs currently provides service twice each week to locations on the south (Kona) coast of the island of Hawaii. Barges discharge cargo at Kawalhae. Airplanes arrive at Keahole Airport. (The State of Hawaii had requested that Customs establish an office at Keahole Airport.) Private vessels and commercial fishing vessels occasionally must be boarded at Honokahau. Cruise vessels are processed at Kailua-Kona. All of this activity takes place outside the port limits of Hilo and requires at least a two hour drive from Hilo. In order to include all potential Customs work sites within the port, the District Director of Honolulu suggests that the port limits of Hilo be expanded to include the entire island of Hawaii. Customs personnel would then be stationed at Keahole and would provide necessary Customs service on the Kona Coast of Hawaii.

The current boundaries of the port of Kahului on the island of Maui are also too restrictive in that Kahului Airport is not within port limits. Customs also clears cargo at many locations on Maui, and it processes cruise vessels in Lahaina. The District Director of Honolulu wishes to include all of these work sites within the port by extending the port limits of Kahului to the entire island of Maui. An office would be established at Lahaina.

Expansion of the port limits for these two islands would improve service to the public and make better use of staffing resources.

Proposed Port Limits

The proposed extended limits of the port of Hilo are the entire island of Hawaii. The proposed extended limits of the port of Kahului are the entire island of Maui.

If these proposed extensions of the ports of entry of Hilo and Kahului are adopted, the list of Customs regions, districts and ports of entry in 19 CFR 101.3(b) will be amended accordingly.

Comments

Prior to adoption of this proposal, consideration will be given to written comments timely submitted to Customs. Submitted comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m., at the Regulations Branch, Office of Regulations and Rulings, 1099 14th Street, NW., Suite 4000, Washington, D.C.

Authority

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66, and 1624.

Regulatory Flexibility Act and Executive Order 12866

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Thus, although this document is being issued with notice for public comment, because it relates to agency management and organization, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency organization matters such as this proposed port extension are exempt from consideration under Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson. Regulations Branch. However, personnel from other offices participated in its development.

Approved: August 10, 1994

George J. Weise,

Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–20690 Filed 8–22–94; 8:45 am]

BILLING CODE 4820–20–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Roof-Bolting-Machine Study and Evaluation Report—Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of availability; comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is announcing the availability of a report dealing with safety hazards associated with roof bolting machines. The report identifies safety problems and suggests solutions. The Agency solicits public comment on issues addressed in the report. The report, along with comments received, will be considered by the Agency in identifying subjects for possible future rulemaking.

DATES: Written comments must be submitted on or before September 16, 1994.

ADDRESSES: The report may be obtained from the Business Office of the National Mine Health and Safety Academy, P.O. Box 1166, Beckley, West Virginia, 25802–1166. Phone: (304) 256–3206. Send written comments to "MSHA—Roof Bolter Safety," Division of Safety, Room 807, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Administrator, Coal Mine Safety and Health, MSHA, (703)235–9423.

SUPPLEMENTARY INFORMATION: Sixteen miners died between January 1984 and April 1994 from machinery accidents involving roof bolting machines. The Mine Safety and Health Administration formed a committee on April 4, 1994, to evaluate roof-bolting machines and to identify problems with machine design and use that may be contributing to or causing accidents, and to offer solutions to those problems. The committee completed its report on July 8, 1994. The report analyzes machinery accidents involving roof-bolting machine design and use in underground mines. Solutions are offered in the report for some of the problems identified.

The Agency is especially interested in comments addressing solutions to the identified problems. MSHA believes that the report provides a unique opportunity for the mining industry to work together with MSHA to prevent future accidents involving roof bolting machines. Public comments would greatly assist the Agency in determining how best to take action toward improving the safety of miners working with roof bolting machines.

Dated: August 12, 1994.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 94–20579 Filed 8–22–94; 8:45 am]

BILLING CODE 4510–43–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5055–2; Proposed Rule No. 17]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list.

The Environmental Protection Agency ("EPA") proposes to add new sites to the NPL. This 17th proposed revision to the NPL includes 6 sites in the General Superfund Section and 4 in the Federal Facilities Section. The identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This action does not affect the 1,232 sites currently listed on the NPL (1,082 in the General Superfund Section and 150 in the Federal Facilities Section). However, it does increase the number of proposed sites to 64 (54 in the General Superfund Section and 10 in the Federal Facilities Section). Final and proposed sites now total 1,296.

DATES: Comments must be submitted on or before October 24, 1994.

ADDRESSES: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA CERCLA Docket Office; (Mail Code 5201); Waterside Mall; 401 M Street, SW; Washington, DC 20460; 202/260–3046. For additional Docket addresses and further details on their contents, see Section I of the "Supplementary Information" portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Keidan, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (Mail Code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW Washington, DC, 20460, or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

I. Introduction.
II. Purpose and Implementation of the NPL.
III. Contents of This Proposed Rule.
IV. Executive Order 12866.
V. Regulatory Flexibility Act Analysis.

I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or

"the Act") in response to the dangers of uncontrolled hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law No. 99–499, 100 Stat. 1613 et seq. To implement CERCLA, the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR Part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. EPA has revised the NCP on several occasions, most recently on July 14, 1994 (59 FR 35852).

Section 105(a)(8)(A) of CERCLA requires that the NCP include "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action." As defined in CERCLA section 101(24), remedial action tends to be long-term in nature and involves response actions that are consistent with a permanent remedy for a release.

Mechanisms for determining priorities for possible remedial actions financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") and financed by other persons are included in the NCP at 40 CFR 300.425(c) (55 FR 8845, March 8, 1990). Under 40 CFR 300.425(c)(1), a site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which is Appendix A of 40 CFR Part 300. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances, pollutants, and contaminants to pose a threat to human health or the environment. Those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under a second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2), requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed whether or not they score above 28.50, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

Based on these criteria, and pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA promulgates a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. That list, which is Appendix B of 40 CFR Part 300, is the National Priorities List ("NPL"). CERCLA section 105(a)(8)(B) defines the NPL as a list of "releases" and as a list of the highest priority "facilities." The discussion below may refer to the "releases or threatened releases" that are included on the NPL interchangeably as "releases," "facilities," or "sites." CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site may undergo CERCLA-financed remedial action only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1).

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on May 31, 1994 (59 FR 27989).

The NPL includes two sections, one of sites being evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites being addressed by other Federal agencies (the "Federal Facilities Section"). Under Executive Order 12580 and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining if the facility is placed on the NPL. EPA is not the lead agency at these sites, and its role at such sites is accordingly less extensive than at other sites. The Federal Facilities Section includes those facilities at which EPA is not the lead agency.

Deletions/Cleanups

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e) (55 FR 8845, March 8, 1990). To date, the Agency has deleted 59 sites from the General Superfund Section of the NPL.

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Sites qualify for the CCL when: (1) any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL. Inclusion of a site on the CCL has no legal significance.

In addition to the 58 sites that have been deleted from the NPL because they have been cleaned up (the Waste Research and Reclamation site was deleted based on deferral to another program and is not considered cleaned up), an additional 180 sites are also in the NPL CCL, all but one from the General Superfund Section. Thus, as of August 12, 1994, the CCL consists of 244 sites.

Cleanups at sites on the NPL do not reflect the total picture of Superfund accomplishments. As of May 30, 1994, EPA had conducted 627 removal actions at NPL sites, and 2,139 removal actions at non-NPL sites. Information on removals is available from the Superfund hotline.

Pursuant to the NCP at 40 CFR 300.425(c), this document proposes to add 10 sites to the NPL. The General Superfund Section includes 1,082 sites, and the Federal Facilities Section includes 150 sites, for a total of 1,232 sites on the NPL. Final and proposed sites now total 1,296.

Public Comment Period

The documents that form the basis for EPA's evaluation and scoring of sites in this rule are contained in dockets located both at EPA Headquarters and in the appropriate Regional offices. The dockets are available for viewing, by appointment only, after the appearance of this rule. The hours of operation for the Headquarters docket are from 9:00 a.m. to 4:00 p.m., Monday through

Friday excluding Federal holidays. Please contact individual Regional dockets for hours.

Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, (Mail Code 5201), Waterside Mall, 401 M Street SW, Washington, DC 20460, 202/260–3046

Ellen Culhane, Region 1, U.S. EPA Waste Management Records Center, HES-CAN 6, J.F. Kennedy Federal Building, Boston, MA 02203–2211, 617/573–5729

Walter Schoepf, Region 2, U.S. EPA, 26 Federal Plaza, New York, NY 10278, 212/264–0221

Diane McCreary, Region 3, U.S. EPA Library, 3rd Floor, 841 Chestnut Building, 9th & Chestnut Streets, Philadelphia, PA 19107, 215/597–7904

Kathy Piselli, Region 4, U.S. EPA, 345 Courtland Street, NE, Atlanta, GA 30365, 404/347–4216

Cathy Freeman, Region 5, U.S. EPA, Records Center, Waste Management Division 7–J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604, 312/886–6214

Bart Canellas, Region 6, U.S. EPA, 1445 Ross Avenue, Mail Code 6H–MA, Dallas, TX 75202–2733, 214/655–6740

Steven Wyman, Region 7, U.S. EPA Library, 726 Minnesota Avenue, Kansas City, KS 66101, 913/551–7241

Greg Oberley, Region 8, U.S. EPA, 999 18th Street, Suite 500, Denver, CO 80202–2466, 303/294–7598

Rachel Loftin, Region 9, U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105, 415/744–2347

David Bennett, Region 10, U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop HW–114, Seattle, WA 98101, 206/553–2103

The Headquarters docket for this rule contains HRS score sheets for each proposed site; a Documentation Record for each site describing the information used to compute the score; pertinent information for any site affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record. Each Regional docket for this rule contains all of the information in the Headquarters docket for sites in that Region, plus the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS scores for sites in that Region. These reference documents are available only in the Regional dockets. Interested parties may view documents, by appointment only, in the Headquarters or the appropriate Regional docket or copies may be requested from the Headquarters or appropriate Regional docket. An informal written request, rather than a formal request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

EPA considers all comments received during the comment period. During the comment period, comments are placed in the Headquarters docket and are available to the public on an "as received" basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes. Comments received after the comment period closes will be available in the Headquarters docket and in the Regional docket on an "as received" basis.

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values. See *Northside Sanitary Landfill* v. *Thomas*, 849 F.2d 1516 (D.C. Cir. 1988). EPA will make final listing decisions after considering the relevant comments received during the comment period.

In past rules, EPA has attempted to respond to late comments, or when that was not practicable, to read all late comments and address those that brought to the Agency's attention a fundamental error in the scoring of a site. (See, most recently, 57 FR 4824 (February 7, 1992)). Although EPA intends to pursue the same policy with sites in this rule, EPA can guarantee that it will consider only those comments postmarked by the close of the formal comment period. EPA cannot delay a final listing decision solely to accommodate consideration of late comments.

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

II. Purpose and Implementation of the NPL

Purpose

The legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96–848, 96th Cong., 2d Sess. 60 (1980)) states the primary purpose of the NPL:

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The identification of a site for the NPL is intended to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites that EPA believes warrant further investigation. Finally, listing a site may, to the extent potentially responsible parties are identifiable at the time of listing, serve as notice to such parties that the Agency may initiate CERCLA-financed remedial action.

Implementation

After initial discovery of a site at which a release or threatened release may exist, EPA begins a series of increasingly complex evaluations. The first step, the Preliminary Assessment ("PA"), is a low-cost review of existing information to determine if the site poses a threat to public health or the environment. If the site presents a serious imminent threat, EPA may take immediate removal action. If the PA shows that the site presents a threat but not an imminent threat, EPA will generally perform a more extensive study called the Site Inspection ("SI"). The SI involves collecting additional information to better understand the extent of the problem at the site, screen out sites that will not qualify for the NPL, and obtain data necessary to calculate an HRS score for sites which warrant placement on the NPL and further study. EPA may perform removal actions at any time during the process. To date EPA has completed 36,497 PAs and 17,469 SIs.

The NCP at 40 CFR 300.425(b)(1) (55 FR 8845, March 8, 1990) limits expenditure of the Trust Fund for

remedial actions to sites on the NPL. However, EPA may take enforcement actions under CERCLA or other applicable statutes against responsible parties regardless of whether the site is on the NPL, although, as a practical matter, the focus of EPA's CERCLA enforcement actions has been and will continue to be on NPL sites. Similarly, in the case of CERCLA removal actions, EPA has the authority to act at any site, whether listed or not, that meets the criteria of the NCP at 40 CFR 300.415(b)(2) (55 FR 8842, March 8, 1990). EPA's policy is to pursue cleanup of NPL sites using all the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other authorities prior to undertaking response action, proceed directly with Trust Fund-financed response actions and seek to recover response costs after cleanup, or do both. To the extent feasible, once sites are on the NPL, EPA will determine high-priority candidates for CERCLA-financed response action and/or enforcement action through both State and Federal initiatives. EPA will take into account which approach is more likely to accomplish cleanup of the site most expeditiously while using CERCLA's limited resources as efficiently as possible.

Although the ranking of sites by HRS scores is considered, it does not, by itself, determine the sequence in which EPA funds remedial response actions, since the information collected to develop HRS scores is not sufficient to determine either the extent of contamination or the appropriate response for a particular site (40 CFR 300.425(b)(2), 55 FR 8845, March 8, 1990). Additionally, resource constraints may preclude EPA from evaluating all HRS pathways; only those presenting significant risk or sufficient to make a site eligible for the NPL may be evaluated. Moreover, the sites with the highest scores do not necessarily come to the Agency's attention first, so that addressing sites strictly on the basis of ranking would in some cases require stopping work at sites where it was already underway.

More detailed studies of a site are undertaken in the Remedial Investigation/Feasibility Study ("RI/FS") that typically follows listing. The purpose of the RI/FS is to assess site conditions and evaluate alternatives to the extent necessary to select a remedy (40 CFR 300.430(a)(2) (55 FR 8846, March 8, 1990)). It takes into account the amount of hazardous substances, pollutants or contaminants released into the environment, the risk to affected populations and environment, the cost to remediate contamination at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of response action to be taken at these sites are made in accordance with 40 CFR 300.415 (55 FR 8842, March 8, 1990) and 40 CFR 300.430 (55 FR 8846, March 8, 1990). After conducting these additional studies, EPA may conclude that initiating a CERCLA remedial action using the Trust Fund at some sites on the NPL is not appropriate because of more pressing needs at other sites, or because a private party cleanup is already underway pursuant to an enforcement action. Given the limited resources available in the Trust Fund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after further analysis that the site does not warrant remedial action.

RI/FS at Proposed Sites

An RI/FS may be performed at sites proposed in the **Federal Register** for placement on the NPL (or even sites that have not been proposed for placement on the NPL) pursuant to the Agency's removal authority under CERCLA, as outlined in the NCP at 40 CFR 300.415. Although an RI/FS generally is conducted at a site after it has been placed on the NPL, in a number of circumstances the Agency elects to conduct an RI/FS at a site proposed for placement on the NPL in preparation for a possible Trust Fund-financed remedial action, such as when the Agency believes that a delay may create unnecessary risks to public health or the environment. In addition, the Agency may conduct an RI/FS to assist in determining whether to conduct a removal or enforcement action at a site.

Facility (Site) Boundaries

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (as the mere identification of releases), for it to do so.

CERCLA section 105(a)(8)(B) directs EPA to list national priorities among the known "releases or threatened releases" of hazardous substances. Thus, the purpose of the NPL is merely to identify releases of hazardous substances that are priorities for further evaluation. Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases Of course, HRS data upon which the NPL placement was based will, to some extent, describe which release is at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis (including noncontiguous releases evaluated under the NPL aggregation policy, described at 48 FR 40663 (September 8, 1983)).

EPA regulations provide that the "nature and extent of the threat presented by a release" will be determined by an RI/FS as more information is developed on site contamination (40 CFR 300.68(d)). During the RI/FS process, the release may be found to be larger or smaller than was originally known, as more is learned about the source and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be defined, and in any event are independent of the NPL listing. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it will be impossible to describe the boundaries of a release with certainty.

For these reasons, the NPL need not be amended if further research into the extent of the contamination expands the apparent boundaries of the release. Further, the NPL is only of limited significance, as it does not assign liability to any party or to the owner of any specific property. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), quoted at 48 FR 40659 (September 8, 1983). If a party contests liability for releases on discrete parcels of property, it may do so if and when the Agency brings an action against that party to recover costs or to compel a response action at that property.

At the same time, however, the RI/FS or the Record of Decision (which defines the remedy selected, 40 CFR 300.430(f)) may offer a useful indication to the public of the areas of contamination at which the Agency is considering taking a response action, based on information known at that time. For example, EPA may evaluate (and list) a release over a 400-acre area, but the Record of Decision may select a remedy over 100 acres only. This information may be useful to a landowner seeking to sell the other 300

acres, but it would result in no formal change in the fact that a release is included on the NPL. The landowner (and the public) also should note in such a case that if further study (or the remedial construction itself) reveals that the contamination is located on or has spread to other areas, the Agency may address those areas as well.

This view of the NPL as an initial identification of a release that is not subject to constant re-evaluation is consistent with the Agency's policy of not rescoring NPL sites:

> EPA recognizes that the NPL process cannot be perfect, and it is possible that errors exist or that new data will alter previous assumptions. Once the initial scoring effort is complete, however, the focus of EPA activity must be on investigating sites in detail and determining the appropriate response. New data or errors can be considered in that process . . . [T]he NPL serves as a guide to EPA and does not determine liability or the need for response. (49 FR 37081 (September 21, 1984)).

See also *City of Stoughton, Wisc.* v. *U.S. EPA*, 858 F. 2d 747, 751 (D.C. Cir. 1988):

> Certainly EPA could have permitted further comment or conducted further testing [on proposed NPL sites]. Either course would have consumed further assets of the Agency and would have delayed a determination of the risk priority associated with the site. Yet * * * "the NPL is simply a rough list of priorities, assembled quickly and inexpensively to comply with Congress' mandate for the Agency to take action straightaway." Eagle-Picher [Industries v. EPA] II, 759 F. 2d [921,] at 932 [(D.C. Cir. 1985)].

III. Contents of This Proposed Rule

Table 1 identifies the 6 NPL sites in the General Superfund Section and Table 2 identifies the 4 NPL sites in the Federal Facilities Section being proposed in this rule. Both tables follow this preamble. All sites are proposed based on HRS scores of 28.50 or above. The sites in Table 1 and Table 2 are listed alphabetically by State, for ease of identification, with group number identified to provide an indication of relative ranking.

To determine group number, sites on the NPL are placed in groups of 50; for example, a site in Group 4 of this proposal has a score that falls within the range of scores covered by the fourth group of 50 sites on the NPL.

Statutory Requirements

CERCLA section 105(a)(8)(B) directs EPA to list priority sites "among" the known releases or threatened releases of hazardous substances, pollutants, or contaminants, and section 105(a)(8)(A) directs EPA to consider certain enumerated and "other appropriate" factors in doing so. Thus, as a matter of policy, EPA has the discretion not to use CERCLA to respond to certain types of releases. Where other authorities exist, placing sites on the NPL for possible remedial action under CERCLA may not be appropriate. Therefore, EPA has chosen not to place certain types of sites on the NPL even though CERCLA does not exclude such action. If, however, the Agency later determines that sites not listed as a matter of policy are not being properly responded to, the Agency may place them on the NPL.

The listing policies and statutory requirements of relevance to this proposed rule cover sites subject to the Resource Conservation and Recovery Act ("RCRA") (42 U.S.C. 6901–6991i) and Federal facility sites. This policy and requirements are explained below and have been explained in greater detail previously through rulemaking (56 FR 5598, February 11, 1991).

Releases From Resource Conservation and Recovery Act (RCRA) Sites

EPA's policy is that facilities are eligible for NPL listing if they have lost authorization to operate and for which there are additional indications that the owner or operator will be unwilling to undertake corrective action. Authorization to operate may be lost when the interim status of the facility is terminated as a result of a permit denial under RCRA section 3005(c) (54 FR 41004).

Consistent with EPA's NPL/RCRA policy, EPA is proposing to add one site to the General Superfund Section of the NPL, the Aqua-Tech Environmental Inc. (Groce Laboratories) site in Spartanburg County, South Carolina, that operated a RCRA Treatment, Storage and Disposal Facility (TSDF) under interim status. This facility lost its authorization to operate when its RCRA TSDF Part B application was denied. Material has been placed in the public docket documenting this.

Releases From Federal Facility Sites

On March 13, 1989 (54 FR 10520), the Agency announced a policy for placing Federal facility sites on the NPL if they meet the eligibility criteria (e.g., an HRS score of 28.50 or greater), even if the Federal facility also is subject to the corrective action authorities of RCRA Subtitle C. In that way, those sites could be cleaned up under CERCLA, if appropriate.

This rule proposes to add four sites to the Federal Facilities Section of the NPL.

Economic Impacts

The costs of cleanup actions that may be taken at any site are not directly attributable to placement on the NPL. EPA has conducted a preliminary analysis of economic implications of today's proposal to the NPL. EPA believes that the kinds of economic effects associated with this proposal generally are similar to those effects identified in the regulatory impact analysis (RIA) prepared in 1982 for the revisions to the NCP pursuant to section 105 of CERCLA and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985). The Agency believes the anticipated economic effects related to proposing and adding sites to the NPL can be characterized in terms of the conclusions of the earlier RIA and the most recent economic analysis.

Inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to the sites included in this rulemaking.

The major events that typically follow the proposed listing of a site on the NPL are a search for potentially responsible parties and a remedial investigation/feasibility study (RI/FS) to determine if remedial actions will be undertaken at a site.

Design and construction of the selected remedial alternative follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

EPA initially bears costs associated with responsible party searches. Responsible parties may bear some or all the costs of the RI/FS, remedial design and construction, and O&M, or EPA and the States may share costs.

The State cost share for site cleanup activities has been amended by SARA. For privately-owned sites, as well as at publicly-owned but not publicly-operated sites, EPA will pay for 100% of the costs of the RI/FS and remedial planning, and 90% of the costs associated with remedial action. The State will be responsible for 10% of the remedial action. For publicly-operated sites, the State cost share is at least 50% of all response costs at the site, including the RI/FS and remedial design and construction of the remedial action

selected. After the remedy is built, costs fall into two categories:

—For restoration of ground water and surface water, EPA will share in startup costs according to the criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years.

—For other cleanups, EPA will share for up to 1 year the cost of that portion of response needed to assure that a remedy is operational and functional. After that, the State assumes full responsibilities for O&M.

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average per site and total cost basis. EPA will continue with this approach, using the most recent cost estimates available; the estimates are presented below. However, there is wide variation in costs for individual sites, depending on the amount, type, and extent of contamination. Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost-recovery actions.

Cost category	Average total cost per site [1]
RI/FS	1,350,000
Remedial Design	1,260,000
Remedial Action	[3] 21,960,000
New present value of O&M [2]	3,770,000

Source: Office of Program Management, Office of Emergency and Remedial Response, U.S. EPA, Washington, DC.

[1] 1993 U.S. Dollars

[2] Assumes cost of O&M over 30 years, $400,000 for the first year and 10% discount rate.

[3] Includes State cost-share.

Costs to the States associated with today's proposed rule are incurred when the sites are finalized and arise from the required State cost-share of: (1) 10% of remedial actions and 10% of first-year O&M costs at privately-owned sites and sites that are publicly-owned but not publicly-operated; (2) at least 50% of the remedial planning (RI/FS and remedial design), remedial action, and first-year O&M costs at publicly-operated sites; and (3) States will assume the cost for O&M after EPA's period of participation. Using the budget projections presented above, the cost to the States of undertaking Federal remedial planning and actions, but excluding O&M costs, would be approximately $21 million. State O&M costs cannot be accurately determined because EPA, as noted above, will pay O&M costs for up to 10 years for restoration of ground water and surface water, and it is not known if the site will require this treatment and for how long. Assuming EPA involvement for 10 years is needed, State O&M costs would be approximately $16 million.

Placing a site on the proposed or final NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost-recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, precise estimates of these effects cannot be made. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of the response costs, but the Agency considers: the volume and nature of the waste at the sites; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed against the parties.

Economy-wide effects of an amendment to the NPL are aggregations of efforts on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this amendment on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

The real benefits associated with today's amendment are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts. Listing sites as national priority targets also may give States increased support for funding responses at particular sites.

As a result of the additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate in advance of completing the RI/FS at these sites.

IV. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While this rule proposes to revise the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this proposed rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. Therefore, this proposed regulation does not require a regulatory flexibility analysis.

NATIONAL PRIORITIES LIST, PROPOSED RULE #17, GENERAL SUPERFUND SECTION

State	Site name	City/county	NPL Gr[1]
FL	Escambia Wood—Pensacola	Escambia Co	5
LA	Agriculture Street Landfill	New Orleans	5
MS	Texas Eastern Kosciusko Compressor Station	Attala Co	5
MT	Burlington Northern Livingston Shop Complex	Livingston	5
OR	Reynolds Metals	Troutdale	1
SC	Aqua-Tech Environmental Inc. (Groce Laboratories)	Spartanburg Co	5

Number of Sites Proposed to General Superfund Section: 6.

[1] Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.

NATIONAL PRIORITIES LIST, PROPOSED RULE #17, FEDERAL FACILITIES SECTION

State	Site name	City/county	NPL Gr[1]
NC	Cherry Point Marine Corps Air Station	Havelock	1
PA	Willow Grove Naval Air & Air Reserve Station	Willow Grove	5
SC	Parris Island Marine Corps Recruit Depot	Beaufort	5
TN	Arnold Engineering Development Center (USAF)	Coffee Co. & Franklin Co..	5

Number of Sites Proposed to Federal Facilities Section: 4.

[1] Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Authority: 42 U.S.C. 9605; 42 U.S.C. 9620; 33 U.S.C. 1321(c)(2); E.O. 11735, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12580, 3 CFR, 1987 Comp., p. 193.

Dated: August 16, 1994.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 94–20549 Filed 8–22–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 555

[Docket 94–69; Notice 1]

Temporary Exemption From Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of request for comments.

SUMMARY: This document requests comments on the recommendation by the National Performance Review that the number of motor vehicles which may be exempted from compliance with the Federal motor vehicle safety standards (FMVSSs) on the basis that they possess innovative safety features be increased from the 2,500 per year presently specified by statute. The recommendation is based on the belief that an increase may encourage vehicle manufacturers to seek exemptions allowing them to introduce safety innovations.

DATES: The closing date for comments is October 24, 1994.

ADDRESSES: Comments should refer to the docket number and the notice number, and be submitted to: Docket Section, room 5109, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Noble Bowie, Office of Plans and Programs, NHTSA (202–366–2549).

SUPPLEMENTARY INFORMATION:

Existing Exemption Authority

NHTSA is directed by 49 U.S.C. 30111 (formerly 15 U.S.C. 1392) to issue FMVSSs to reduce the number and severity of vehicle crashes and to reduce the likelihood that deaths and injuries will occur in those crashes. In recognition of the need to provide exemptions from the FMVSSs in special, limited circumstances, NHTSA requested Congress in 1972 to give it express authority for this purpose. The authority was intended to, among other things, permit the agency to grant exemptions to permit vehicle manufacturers to allow them to incorporate new safety features into their vehicles.

In response, Congress enacted legislation later that same year to authorize the agency to exempt a motor vehicle manufacturer from any FMVSS based on any one of four findings. 49 U.S.C. 30113 (formerly section 123 of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1410). One was a finding that "the exemption would make easier the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of the standard." Such an exemption may be granted for a period that does not exceed two years (subject to renewal). The exemption may not cover "more than 2,500 vehicles to be sold in the United States in any 12-month period". (49 U.S.C. 30113 (d) and (e)).

There is scant legislative history regarding the congressional intentions underlying this exemption provision.

A single sentence of explanation appeared in floor statements made on October 6, 1972 by Senator Hartke:

> The purpose of this provision is to enable manufacturers to experiment with innovative safety concepts but not endanger the health and safety of the motoring public.

(See pages S34207–34209)

In issuing FMVSSs, the agency drafts them to be as performance oriented as possible to minimize the need to amend them to accommodate future technological advances. If a vehicle manufacturer nevertheless finds that a provision of an existing standard has the effect of prohibiting a new device, it may petition the agency to amend that provision so as to allow the device. At

any given time, the agency is conducting numerous rulemaking proceedings in response to such petitions. In a very few cases since 1972, vehicle manufacturers have petitioned for exemption under the provision relating to innovative safety features. Indeed, exemption on the grounds of an innovative safety feature has been the least frequently used of the four statutory bases upon which a manufacturer may submit an exemption petition.

National Performance Review

This notice responds to a recommendation by The National Performance Review (NPR), which was chaired by the Vice President of the United States. The NPR reviewed NHTSA's statutes and regulations, and recommended in its report, "From Red Tape to Results," that the number of vehicles that may be covered by a safety exemption be raised. For the benefit of readers unfamiliar with this particular NPR recommendation, the agency has set forth below the relevant passages from the accompanying Report of the National Performance Review—September 1993 (pp. 23–24):

Background

Technology and consumer preferences often change faster than the rulemaking process of the National Highway Traffic Safety Administration (NHTSA) can move. Today, for example, automotive safety is an important concern of consumers. Manufacturers who can deliver the safety features their customers want are at a sales advantage. Manufacturers, therefore, have a financial incentive for investing time and money in new or improved safety features—if they thought they could make their way through the NHTSA approval process in time to capitalize on the current trends in consumer preference.

Current enabling legislation and the NHTSA rulemaking processes, however, are too encumbering and time consuming to enable NHTSA to turn short-term consumer trends into long-term safety advances. The cost and time required to assemble the needed justification and the average two-year duration of the rulemaking process can inhibit manufacturers from introducing safety improvements. As a result, consumers have to wait two years or more before improvements reach the market.

Although NHTSA can grant a temporary exemption from standards to help advance new safety systems, no more than 2,500 vehicles can be sold per year for each exemption granted. This number is too low to provide manufacturers with sufficient economic and marketing incentives and to allow extensive, real-world evaluations.

Actions

1. Legislation should be enacted to raise the current 2,500-vehicle limit on exemptions.

NHTSA should consider all factors that are relevant to expanding the exemption provision into a more effective mechanism for encouraging safety innovations. NHTSA should then determine what higher exemption authority is desirable and draft legislation for submission to Congress at the beginning of the next session (January 1995).

Legislation should be enacted to authorize NHTSA to grant such exemptions after public notice and comment.

NHTSA should grant exemptions only after it is satisfied that a manufacturer will thoroughly evaluate the actual "on-road" benefits (or problems) of the exempted safety system. NHTSA should ensure that the manufacturers carry out the evaluation and help them to do this.

Implications

By increasing the vehicle limits, NHTSA will promote cooperation between government and industry, motivate industry to introduce new safety devices because of the economic advantage of selling innovative safety features, enhance support from industry and consumers for possible safety improvements, and introduce some safety advances to the marketplace sooner than might occur through lengthy, costly, and contentious rulemaking.

Fiscal Impact

Both industry and government will be able to reduce costs associated with research and evaluation. NHTSA will also realize a reduction in staff resources currently devoted to rulemaking; however, the specific fiscal implications will depend on the nature and frequency of exemptions and cannot be estimated.

Issues for Public Comment

In order to assess the need for legislation and to prepare a request for it by January 1995, if such is warranted, NHTSA requests information that will assist it in identifying ways in which its exemption authority could be amended to encourage manufacturers to seek exemptions in order to incorporate new safety technologies in production vehicles at the earliest time in advance of possible amendments of relevant FMVSSs. Two particular concerns underlie the NPR report: (1) the minimum size of production runs of new safety features necessary to be economically feasible; and (2) the minimum number of vehicles required to provide statistically significant data for evaluation. Therefore, NHTSA asks vehicle manufacturers to quantify these two minima, and explain the basis for their responses. Manufacturers and other commenters should submit documents, analyses, or other data that are germane to these concerns.

NHTSA also requests comments on the following issues—

1. Whether impediments exist, such as liability concerns, that discourage vehicle manufacturers from using the exemption process to evaluate safety innovations.

2. The identity of any specific existing or anticipated safety innovations whose introduction might be prohibited by an existing or proposed FMVSS and for which vehicle manufacturers would apply for exemption if the number of vehicles covered were increased, and/or if the exemption term were longer.

3. The level to which the number of exempted vehicles would have to be increased and/or the extent to which exemption term would have to be lengthened in order to encourage vehicle manufacturers to apply for temporary exemptions.

4. Whether the number of exempted vehicles and/or term should be left to the Administrator's discretion, instead of being statutorily specified as at present.

5. Under expanded exemption authority, how the agency should assess, in advance of the results of an on-the-road evaluation, the likelihood that an innovative safety feature will yield equal or superior safety benefits. The agency is mindful of the concern expressed in the legislative history that the issuance of exemptions for innovative safety features should not endanger the health and safety of the motoring public. If the number of vehicles that can be covered by in a single exemption is increased, there could be a commensurate increase in the potential adverse consequences of an erroneous judgment by the agency that an innovative feature will provide safety benefits that equal or exceed those of complying features.

6. Whether there are other amendments to NHTSA's existing statutory authority, 49 U.S.C. Chapter 301—Motor Vehicle Safety (formerly 15 U.S.C. 1381 et seq., the National Traffic and Motor Vehicle Safety Act) which would encourage automotive safety innovations without compromising safety.

7. The validity of the assumptions underlying NPR's analysis and conclusions.

It is requested but not required that ten copies of each comment be submitted. No comments may exceed 15 (fifteen) pages in length (49 CFR 553.21). Necessary attachments may be appended to submissions without regard to the 15-page limit.

All comments received before the close of business on the comment closing date listed above will be considered and will be available for examination in the docket room and the above address both before and after that date. To the extent possible, comments filed after the closing date will be

considered. The agency will continue to file relevant information as it becomes available. It is recommended that interested persons continue to examine the docket for new material. Those commenters desiring to be notified upon receipt of their comments by the docket section should include a self-addressed, stamped postcard in the envelope with their comments. Upon receipt of their comments, the docket supervisor will return the postcard by mail.

Authority: 49 U.S.C. 30117.

Issued on: August 16, 1994.

Donald C. Bischoff,

Associate Administrator for Plans and Policy.

[FR Doc. 94–20635 Filed 8–22–94; 8:45 am]

BILLING CODE 4910–59–P

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1048

[Ex Parte No. MC–37 (Sub-No. 43)]

McAllen, TX Commercial Zone—Passenger Operations

AGENCY: Interstate Commerce Commission.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The City of McAllen, TX (petitioner) has filed a petition seeking withdrawal of the commercial zone exemption provided in 49 U.S.C. 10526(b) so as to subject the local operations of motor passenger carriers that traverse the United States-Mexico border within the commercial zone of McAllen (and, if appropriate, other cities similarly situated) to the regulatory requirements normally applicable to the routes, rates, and services of motor carriers of passengers in interstate and foreign commerce. Petitioner alleges that the requested relief is necessary to alleviate problems of public safety, traffic congestion, and unfair competition by exempt foreign passenger carriers operating within the commercial zones of border municipalities. Petitioner alleges that these problems have been exacerbated by the recent passage of the North American Free Trade Agreement (NAFTA). Comments in support of the petition were filed by Valley Transit Company, Inc., the Railroad Commission of Texas, and the Attorney General of the State of Texas. Following receipt of public comments resulting from this advance notice of proposed rulemaking (ANPR), specific changes to our commercial zone regulations would be proposed for comment if we proceed to the notice of proposed rulemaking stage.

DATES: Any person interested in participating in this proceeding as a party of record may file comments by October 24, 1994.

ADDRESSES: Send an original and 10 copies of pleadings referring to Ex Parte No. MC–37 (Sub-No. 43) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: For a more detailed discussion of the current regulations, the issues raised by the petition, and the information that we seek, see the Commission's separate decision. To obtain a copy of this decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commission, Washington, D.C. 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Regulatory Flexibility Analysis

Because this is not a notice of proposed rulemaking within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we need not conduct now an examination of its impact on small businesses pursuant to that Act. Nevertheless, we welcome any comments regarding the small entities considerations embodied in that Act. If we decide to issue a notice of proposed rulemaking, we will conduct an appropriate Regulatory Flexibility Act examination.

Environmental and Energy Considerations

Issuance of this ANPR will not significantly affect either the quality of the human environment or the conservation of energy resources because we merely seek information and are not proposing any change in current rules or policy.

We preliminarily conclude that, even if we subsequently decide to grant the relief sought by petitioner, an environmental assessment would not be necessary under our regulations because the proposed action would not result in changes in carrier operations that exceed the thresholds established in our regulations. See 49 CFR 1105.6(c)(2). Nonetheless, we invite comments on the environmental and energy impacts of petitioner's proposal.

List of Subjects in 49 CFR Part 1048

Commercial zones, Motor carriers.

Authority: 49 U.S.C. 10321 and 10526; 5 U.S.C. 553.

Decided: August 11, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons and Morgan.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–20653 Filed 8–22–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC42

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Lesquerella Perforata (Spring Creek Bladderpod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status for Spring Creek bladderpod pursuant to the Endangered Species Act (Act) of 1973, as amended. This rare plant is presently known from only a limited area within Tennessee's Central Basin. It is threatened by habitat alteration; residential, commercial, or industrial development; livestock-grazing; conversion of its limited habitat to pasture; and habitat encroachment by woody vegetation and herbaceous perennials. This proposal, if made final, would extend the protection and recovery provisions of the Act to Spring Creek bladderpod.

DATES: Comments from all interested parties must be received by October 24, 1994. Public hearing requests must be received by October 7, 1994.

ADDRESSES: Comments, materials, and requests for a public hearing concerning this proposal should be sent to the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr Robert R. Currie at the above address (704/665–1195, Ext. 224).

SUPPLEMENTARY INFORMATION:

Background

Lesquerella perforata (Spring Creek bladderpod), described by R. C. Rollins